

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Improving Public Safety Communications in the
800 MHz Band
New 800 MHz Band Plan for Puerto Rico and the
U.S. Virgin Islands
WT Docket 02-55

THIRD REPORT AND ORDER
AND THIRD FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: April 26, 2010

Released: April 26, 2010

Comment Date: 30 days after publication in the Federal Register
Reply Comment Date: 45 days after publication in the Federal Register

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. By this Third Report and Order and Third Further Notice of Proposed Rulemaking, the Federal Communications Commission's Public Safety and Homeland Security Bureau (PSHSB or Bureau), on delegated authority, adopts a revised 800 MHz band plan for Puerto Rico in order to accomplish the Commission's goals for 800 MHz band reconfiguration. Herein, we direct the 800 MHz Transition Administrator (TA) how to allocate spectrum in the ESMR portion of the band and we establish an eighteen-month transition period for completion of rebanding in Puerto Rico, commencing 60 days after the effective date of this Third Report and Order. Additionally, we seek comment on our tentative conclusion to adopt the same revised band plan for the U.S. Virgin Islands (USVI).

II. BACKGROUND

2. On May 24, 2007, the Commission adopted a Second Memorandum Opinion and Order in this proceeding (800 MHz Second MO&O), in which it determined that an alternative band plan was appropriate for Puerto Rico due to the unique nature of 800 MHz incumbency there, relative to other areas subject to 800 MHz band reconfiguration. Accordingly, the Commission directed the TA to propose an alternative band plan and negotiation timetable for Puerto Rico. The Commission required that the TA's proposal conform with the following criteria:

1 "ESMR" refers to "Enhanced Specialized Mobile Radio," a term that is used to designate 800 MHz systems that use cellular system architecture. See Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, Report and Order, 19 FCC Rcd 14969, 14972 ¶ 2 n.6 (2004).

2 Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, Second Memorandum Opinion and Order, 22 FCC Rcd 10467 (2007) (800 MHz Second MO&O).

3 Id. at 10479 ¶ 32.

4 Id. at 10479-80 ¶ 33.

- The non-ESMR band plan must fully accommodate all non-ESMR licensees, including those that must be relocated from the Upper 200 channels.
- The band plan must include a guard band between the ESMR and non-ESMR bands unless there is insufficient spectrum to accommodate a guard band, in which case public safety systems must be protected against interference, *e.g.*, by locating mission-critical public safety systems as far as feasible from the ESMR band.
- Replacement spectrum in the ESMR band must be assigned to ESMR licensees and ESMR-eligibles in accordance with the Commission's rules governing Economic Area (EA) and site-based licenses. Sprint Nextel Corporation (Sprint) may receive no more spectrum in the ESMR band in Puerto Rico than it holds there currently in the 800 MHz band.
- If there is insufficient spectrum in the ESMR band to accommodate all ESMR systems and ESMR-eligibles, Sprint must surrender spectrum on a *pro rata* basis to the other licensees to meet the shortfall. If insufficient spectrum remains after Sprint has surrendered spectrum, then *pro rata* apportionment shall be used to determine each licensee's share of the ESMR band. All ESMR and ESMR-eligible licensees must participate in such apportionment.⁵

3. The Commission delegated authority to the Bureau to approve or modify the proposed band plan and timetable, and suspended the rebanding timetable for Puerto Rico until a new band plan was adopted.⁶ On October 19, 2007, the TA filed the requested band plan proposal in this docket (TA Proposal).⁷ On June 30, 2008, we sought comment on the TA Proposal for 800 MHz band reconfiguration in Puerto Rico as well as alternative band plans.⁸ We received three comments and three reply comments in response to the *FNPRM*.⁹

III. DISCUSSION

4. The *FNPRM* sought comment on a number of issues that affect the Puerto Rico band plan. Below, we first address the non-ESMR portion of the Puerto Rico band plan; next, the ESMR portion of the band plan; and last, the transition period in Puerto Rico.

A. Band Plan Elements Applicable to the Non-ESMR Band

5. Under the TA Proposal, the Puerto Rico band plan is similar to the band plan for non-border regions of the United States (U.S. Band Plan), except that the Expansion Band is increased by 0.5 megahertz by eliminating the lower 0.5 megahertz portion of the Guard Band.¹⁰ This places the Puerto Rico Expansion Band at 815-816.5/860-861.5 MHz, and the Puerto Rico Guard Band at 816.5-817/861.5-862 MHz.¹¹ The band plan accommodates all non-ESMR incumbents in the non-ESMR portion of the band and no incumbent will be relocated more than once, except in the case of a licensee relocating to the

⁵ *Id.* at 10479-80 ¶ 33. As a general matter, we note that the Commission emphasized “that the presumption is that licensees other than Sprint who relocate to the ESMR band should be able to replicate their existing channel capacity to the degree specified in the Commission’s orders.” *Id.* at 10478 ¶ 30.

⁶ *Id.* at 10479-80 ¶ 33.

⁷ Proposal for Adoption of an Alternative 800 MHz Band Plan and Negotiation Timetable for the Puerto Rico and U.S. Virgin Islands Economic Area, WT Docket 02-55, filed October 19, 2007 (TA Proposal).

⁸ See Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Second Further Notice of Proposed Rulemaking*, 23 FCC Rcd 10179 (PSHSB 2008) (*FNPRM*).

⁹ Parties filing comments and reply comments are listed in Appendix E.

¹⁰ TA Proposal at 5, 8. A diagram of the new Puerto Rico band plan we adopt in this *Third Report and Order* is provided in Appendix C.

¹¹ *Id.* at 8.

ESMR band.¹² The larger Expansion Band also provides the spectrum necessary to clear licensees from the remaining portion of the Guard Band, resolves combiner spacing issues and provides for some future system expansion.¹³ The TA notes that, with the larger Expansion Band, there still will be at least a 1 megahertz separation between ESMR systems and existing public safety licensees that elect to remain in the Expansion Band.¹⁴ In general, commenting parties supported the TA's proposal for the non-ESMR portion of the band plan.¹⁵

6. Based on the record, we adopt the TA Proposal for the non-ESMR portion of the band because it best fulfills the Commission's goal to separate—to the greatest extent possible—public safety and other non-cellular licensees from licensees that employ cellular technology in the 800 MHz band.¹⁶ The non-ESMR band plan adopted herein contains the following elements:

- All NPSPAC licensees will be relocated from their current 821-824/866-869 MHz channel assignments to channel assignments 15 MHz lower in frequency, *i.e.*, in the 806-809/851-854 MHz band segment.¹⁷
- As with the non-border U.S. Band Plan, all Puerto Rico incumbents in the 806-809/851-854 MHz band segment will be relocated to comparable spectrum in the Interleaved, Expansion, or ESMR Band, depending on their eligibility.¹⁸
- All licensees currently operating in the Interleaved Band will remain on their current frequencies, except those relocating to the ESMR band.¹⁹
- All non-ESMR incumbents that are not public safety licensees and that currently operate in the Expansion Band, as modified, will remain on their current frequencies.²⁰
- Licensees in the modified Guard Band may, at their option, relocate to the Interleaved or Expansion Band.²¹
- All licensees that currently operate between 817-821/862-866 MHz and are not eligible to remain in the ESMR band will be relocated to the 809-816.5/854-861.5 MHz band segment, which includes the Interleaved and Expansion Bands of the Puerto Rico Band Plan.²²

¹² *Id.* at 4.

¹³ *Id.* at 4-5. The TA notes that, notwithstanding the proximity to the ESMR band, licensees in the Expansion Band receive full interference protection from ESMR operations. *Id.* at 5, 8.

¹⁴ *Id.* at 5, 8. The TA Proposal provides a 0.5 MHz Guard Band separating the Expansion Band from the ESMR Band to provide better interference protection to licensees in the Expansion Band. *Id.* at 5.

¹⁵ *See, e.g.*, Comments of Sprint Nextel Corporation at 2 (Sprint Comments); Comments of North Sight Communications, Inc., at 2 (North Sight Comments). Preferred Communications Systems, Inc. (hereinafter PCSI), however, proposed reducing the size of the non-ESMR band in order to expand the ESMR band. We address PCSI's proposal below.

¹⁶ *FNPRM*, 23 FCC Rcd at 10180 ¶ 4.

¹⁷ TA Proposal at 7.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 8. Public safety licensees in the Expansion Band will be relocated unless they elect to remain in the Expansion Band. However, currently there are no public safety licensees in the extended Expansion Band. *Id.*

²¹ *Id.* at 5.

²² *Id.* at 10.

B. Band Plan Elements Applicable to the ESMR Band

7. Some commenting parties registered concerns about particular aspects of the TA Proposal for the ESMR portion of the band. We discuss the TA Proposal and the commenting parties' concerns below.

8. Under the TA Proposal, the ESMR Band in Puerto Rico is identical to the U.S. non-border 817-824/862-869 MHz ESMR band segment²³ The TA found that not all ESMR and ESMR-eligible licensees in Puerto Rico could be accommodated within that ESMR Band segment,²⁴ and, therefore, apportioned the Puerto Rico ESMR Band in accordance with the *800 MHz Second MO&O*.²⁵

9. Sprint and North Sight Communications, Inc. (North Sight) dispute the TA's proposed apportionment of ESMR spectrum.²⁶ Sprint argues that the *FNPRM* and the TA Proposal do not provide sufficient detail on the planned distribution of spectrum among licensees that are eligible to relocate to, or remain in, the ESMR band.²⁷ Specifically, Sprint claims that neither the *FNPRM* nor the TA Proposal addresses the status of licenses in Puerto Rico belonging to Preferred Communications Systems, Inc. (PCSI), and Preferred Acquisitions, Inc. (PAI)²⁸ At the time Sprint filed its comments, PCSI and PAI were the subject of a Commission proceeding in which they were ordered to show cause why their licenses should not be revoked.²⁹ The presiding Administrative Law Judge (ALJ) terminated the proceeding on August 6, 2009 and approved a settlement agreement among the Commission's Enforcement Bureau and PCSI and PAI.³⁰ A related party, Pendleton C. Waugh (Waugh), filed an appeal to the full Commission of the ALJ's approval of the settlement agreement.³¹ Consequently, the matter of revocation of PCSI and PAI's licenses remains undecided pending disposition of Waugh's appeal. PAI also has pending with the Commission's Wireless Telecommunications Bureau (WTB) a request for waiver of its 800 MHz construction obligations.³² Sprint contends that the show cause proceeding and the waiver request must be resolved before any apportionment of Puerto Rico ESMR spectrum takes place.³³ North Sight opposes any plan that proposes to assign ESMR channels to PCSI or PAI.³⁴

10. PCSI and PAI and Charles D. Guskey (Guskey), a shareholder of PCSI, propose alternative ESMR band plans.³⁵ PCSI and PAI propose increasing the size of the ESMR band to

²³ *Id.* Note that the channel distribution is somewhat different in the Southeast U.S. where Southern LINC operates as a Sprint competitor. See *800 MHz Second MO&O*, 22 FCC Rcd at 10478 ¶ 29.

²⁴ TA Proposal at 3.

²⁵ *Id.*

²⁶ Sprint Comments at 3; North Sight Comments at 3-4.

²⁷ Sprint Comments at 3.

²⁸ PAI is a wholly-owned subsidiary of PCSI. See Preferred Communications Systems, Inc., *et al.*, *Order to Show Cause and Notice of Opportunity for Hearing*, 22 FCC Rcd 13363, 13367 (2007) (*Preferred Order*).

²⁹ *Id.* at 13363.

³⁰ See Preferred Communications Systems, Inc. *et al.*, *Order*, FCC 09M-51 (ALJ Aug. 6, 2009) (granting motion for approval of settlement agreement); Preferred Communications Systems *et al.*, *Memorandum Opinion and Order*, FCC 09M-57 (ALJ Sept. 25, 2009) (renewing *Order* FCC 09M-51).

³¹ See Pendleton C. Waugh, Notice of Appeal (filed October 5, 2009).

³² See PAI Request for Waiver, Dec. 1, 2005.

³³ Sprint Comments at 3-4.

³⁴ North Sight Comments at 3.

³⁵ Comments of Preferred Communications Systems, Inc., at 30-36 (PCSI Comments); Reply Comments of Preferred Communications Systems, Inc., at 2 (PCSI Reply Comments); Reply Comments of Charles D. Guskey at Attachment E (Guskey Reply Comments).

815.2375-824/860.2375-869 MHz.³⁶ Alleging that it holds the dominant 800 MHz SMR licensing position in Puerto Rico, PCSI proposes to pay all band reconfiguration costs in Puerto Rico³⁷ provided that Sprint assigns 10 megahertz of 1.9 GHz spectrum to PCSI in Puerto Rico and the Virgin Islands.³⁸ Guskey proposes that PCSI and PAI receive a contiguous block of spectrum in the upper portion of the ESMR band—*i.e.*, the 821-824/866-869 MHz former NPSPAC spectrum (120 25 kHz channels)—and an additional 0.575 megahertz of spectrum in the former Interleaved Band (23 channels) that Sprint would surrender to PCSI and PAI.³⁹

11. Although the show cause proceeding and the PAI waiver request remain pending, all of PCSI's and most of PAI's Puerto Rico licenses at issue in those proceedings are in the new NPSPAC band (806-809/851-854 MHz) and are, therefore, subject to relocation as part of 800 MHz rebanding.⁴⁰ Thus, notwithstanding the pendency of the proceedings, PCSI and PAI must relinquish their 806-809/851-854 MHz spectrum holdings to allow NPSPAC licensees to relocate into that band segment.⁴¹ Accordingly, the Commission has directed PSHSB and the Wireless Telecommunications Bureau to exercise their authority under the 800 MHz rebanding orders to modify PCSI and PAI's licenses, as needed, to enable NPSPAC licensees to relocate to the 806-809/851-854 MHz band in accordance with the rebanding schedule.⁴²

12. In addition, the Commission has stated that, unless PCSI and PAI's licenses "are revoked or otherwise terminated in this [show cause] proceeding, PCSI and PAI have the right to relocate from the 806-809/851-854 MHz band to 'comparable spectrum' higher up in the 800 MHz band as provided in the rebanding proceeding."⁴³ In the case of PAI's EA licenses, however, the right to relocate is also contingent on grant by WTB of PAI's pending waiver request for an extended construction deadline. If WTB denies this request, PAI's licenses will cancel automatically.⁴⁴ Therefore, the Commission stated it "will defer assigning replacement spectrum to PAI until the conclusion of this [show cause] proceeding and resolution of the Waiver Request."⁴⁵ The Commission explained that, "[d]eferral of relocation does not prejudice PAI because it has no operating facilities for any of its EA licenses and has requested that it not be required to construct and commence operations until after it has been relocated."⁴⁶ Also, the Commission directed PSHSB and the TA "to ensure that replacement spectrum for PAI will be made

³⁶ PCSI Comments at 33. Under PCSI's plan, public safety licensees would move to 806-809 MHz/851-854 MHz on a "geographic footprint basis." *Id.* at 34. The interleaved portion of the band would be set aside for public safety, high site Specialized Mobile Radio (SMR) and Business/Industrial Land Transportation (B/ILT) users at 809-814.2375 MHz/854-859.2375 MHz. *Id.* at 34-35. The Preferred proposal eliminates the Expansion Band. *Id.* at 34. The Guard Band would be located at 814.2375-815.2375 MHz/859.2375-860.2375 MHz. *Id.*

³⁷ *Id.* at 35.

³⁸ *Id.* at 36.

³⁹ Guskey Reply Comments at 3-6. Under Guskey's proposal Sprint would receive 20 channels in the ESMR band, which would be interleaved with 20 channels assigned to North Sight (817-818/862-863 MHz), and North Sight would receive a contiguous block of 97 replacement channels. *Id.*

⁴⁰ See *Preferred Order*, 22 FCC Rcd at 13383-84 ¶ 57.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 13384 ¶ 58. In that connection, the Commission explained that Sprint "is not required to pay for relocation of PCSI and PAI's facilities," *id.* at n.129, because PCSI and PAI have elected to convert to ESMR operations, which requires PCSI and PAI to pay their own relocation costs. *Id.*

⁴⁴ *Id.* at 13384 ¶ 58 and n.130.

⁴⁵ *Id.* at 11384 ¶ 58.

⁴⁶ *Id.* at 13384 n.131.

available in the event that PAI relocates.⁴⁷ With respect to PCSI's licenses, the Commission stated that PSHSB and the TA "will provide for relocation of PCSI in accordance with the rebanding rules."⁴⁸ But, if the Commission "determine[s] that PCSI is an unqualified licensee . . . PCSI's relocated licenses will be subject to revocation."⁴⁹

13. Accordingly, we direct the TA to reserve replacement spectrum in its channel assignment plan for PCSI's and PAI's site-based licenses and EA licenses. We recognize that reserving channels for PCSI and PAI along with other ESMR and ESMR-eligible licensees will require *pro rata* adjustment of post-rebanding channel assignments for some licensees. Currently, Sprint, North Sight, PCSI, and PAI collectively, hold 410 EA channels,⁵⁰ whereas the reconfigured ESMR band will accommodate only 280 channels. To address this shortfall, we direct the TA to use the following procedure:

- The TA will attempt to assign replacement channels to the EA-based non-Sprint ESMR and ESMR-eligible licensees on a 1:1 basis relative to their existing Puerto Rico holdings. If ESMR channels remain after this assignment, the TA shall assign them to Sprint.
- If, however, sufficient ESMR channels are not available to assign them on a 1:1 basis to all non-Sprint ESMR and ESMR-eligible licensees electing to relocate to the ESMR band, then the number of Sprint ESMR channels will be reduced to the extent necessary to assign channels to the non-Sprint licensees on a 1:1 basis.

14. We have determined that using this procedure, and assuming that PCSI and PAI retain their licenses, the post-rebanding distribution of ESMR channels would result in PCSI and PAI holding 125 channels (no change), North Sight holding 120 channels (no change) and Sprint holding 35 channels (a reduction of 130 channels). If PCSI and PAI's licenses are revoked or cancelled, their reserved channels will be redistributed so that North Sight would hold 120 channels (no change) and Sprint would hold 160 channels (a 5 channel reduction).

15. Given the unresolved status of PCSI's and PAI's licenses, our approach of requiring the TA to reserve channels for PCSI and PAI most effectively balances the Commission's objectives, the concerns raised by North Sight and Sprint, and PCSI and PAI's relocation rights. We reject PCSI's proposal that Sprint assign 1.9 GHz spectrum to PCSI in Puerto Rico and the USVI in exchange for PCSI paying for 800 MHz band reconfiguration in Puerto Rico and the USVI.⁵¹ Guskey made a comparable proposal in August 2004.⁵² The Commission denied the proposal and denied Guskey's subsequent petition for reconsideration of the denial of his proposal.⁵³ In rejecting Guskey's petition for reconsideration, the Commission noted that it had already determined not to open access to the 1.9 GHz band to all EA licensees, and stated that "[i]t is well established that the Commission does not grant reconsideration for the purpose of allowing a petitioner to reargue matters already presented, considered, and disposed of by the Commission."⁵⁴ Otherwise, the Commission "would be involved in a never-ending

⁴⁷ *Id.*

⁴⁸ *Id.* at 13384 ¶ 58.

⁴⁹ *Id.*

⁵⁰ EA licensee High Tech (20 channels) has not elected to relocate to the ESMR band.

⁵¹ See Preferred Reply Comments at 3 (offering to "bear the financial responsibility to pay all reasonable costs directly related to the rebanding process in [the Puerto Rico] EA market," which includes both Puerto Rico and USVI).

⁵² See Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Memorandum Opinion and Order*, 20 FCC Rcd 16015, 16048-49 ¶¶ 74-75 (2005).

⁵³ See *Second MO&O*, 22 FCC Rcd at 10486-87 ¶ 53. Additionally, Preferred's proposal relative to the U.S. Virgin Islands falls outside the scope of the *FNPRM*. See *FNPRM*, 23 FCC Rcd at 10180 n.7.

⁵⁴ See *Second MO&O*, 22 FCC Rcd at 10487 ¶ 54.

process of review that would frustrate the Commission's ability to conduct its business in an orderly fashion."⁵⁵ Finally, we decline to adopt Guskey's ESMR band proposal. Guskey has not shown that his proposal is superior in any manner to the TA Proposal, and it would give an unwarranted advantage to PCSI relative to other ESMR licensees.

C. Timetable

16. The TA proposed that all Puerto Rico licensees would be subject to a single 90-day mandatory negotiation period, after which any licensee that fails to negotiate a Frequency Reconfiguration Agreement (FRA) with Sprint would enter TA-sponsored mediation.⁵⁶ We sought comment on this proposal. We also sought comment on the sequence and timing of rebanding activity in Puerto Rico once a final band plan is adopted.⁵⁷ We anticipated that rebanding will need to proceed in stages similar to Stage 1 and Stage 2 in the rest of the U.S. The staging sequence, however, must also take into account the large number of site-based systems that will need to be relocated from the ESMR band to non-ESMR channels.⁵⁸ We sought comment on this staged approach, the amount of time that should be allotted for each stage, and whether any adjustments to this approach are needed due to the unique dispersion of 800 MHz licensees in Puerto Rico.⁵⁹

17. Sprint supports the TA's proposal for a single 90-day mandatory negotiation period for the remaining incumbent licensees that must be retuned from the 816.5-821/861.5-866 MHz segment of the band.⁶⁰ However, Sprint contends that the 90-day mandatory negotiation period should not be initiated unless the incumbent licensee has furnished Sprint with a valid cost estimate from which to negotiate.⁶¹ With regard to NPSPAC and Expansion Band public safety licensees who have yet to retune, Sprint suggests that these licensees should remain subject to the FCC's existing negotiation timelines and noted that most have already negotiated FRAs.⁶²

1. Planning, Negotiation, and Mediation

18. Based on the record and our experience with prior rebanding waves, we adopt a single 90-day mandatory negotiation period for the remaining incumbent licensees that must be retuned from the 816.5-821/861.5-866 MHz portion of the band. Thereafter, if Sprint and an incumbent licensee have not negotiated a FRA, they must enter mandatory TA-sponsored mediation.⁶³ We note Sprint's concern about a valid cost estimate being available in advance of negotiation and remind parties of their mutual obligation to negotiate in good faith, which obligation includes promptly providing—and responding to—cost estimates for system reconfiguration. There are only 12 licensees—none of them public safety licensees—that must initiate FRA negotiations with Sprint.⁶⁴ Expedited FRA negotiations should not be

⁵⁵ *Id.* (citing Applications of Warren Price Communications, Inc. Bay Shore, New York *et al.*, for a Construction Permit for a New FM Station on Channel 276 at Bay Shore, New York, *Memorandum Opinion and Order*, 7 FCC Rcd 6850 (1992)).

⁵⁶ TA Proposal at 11-12.

⁵⁷ *FNPRM*, 23 FCC Rcd at 10181 ¶ 7.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Sprint Comments at 4.

⁶¹ *Id.*

⁶² *Id.* at 4 n.8. Under the Commission's rules, licensees are afforded a three-month voluntary negotiation period followed by a three-month mandatory negotiation period. *See* 47 C.F.R. §§ 90.677(b), (c).

⁶³ *See* Appendix D, 47 C.F.R. § 90.677(b), (c), as amended.

⁶⁴ TA Proposal at Appendix A.

unduly burdensome to these licensees. Experience has shown us that B/ILT and SMR licensees—few with complex systems—have negotiated agreements more rapidly than their public safety counterparts.

19. During the Puerto Rico reconfiguration, we also extend the filing freeze on new applications in the Puerto Rico region until thirty working days after the date for completion of mandatory negotiations.⁶⁵ Because we are adopting a 90 day mandatory negotiation period, the freeze shall commence 30 days from the effective date of this *Third Report and Order and Third Further Notice of Proposed Rulemaking*. However, the freeze does not apply to modification applications that do not change an 800 MHz frequency or expand an 800 MHz station's existing coverage area (e.g., administrative updates), assignments/transfers, or renewal-only applications. In addition, licensees in the Puerto Rico region may expand their facilities or add channels during the freeze, but only pursuant to Special Temporary Authorization (STA). Requests for an STA must be accompanied by a demonstration that, without the new or expanded facilities, there would be a specific, material and serious adverse effect on the safety of life or property.⁶⁶

2. Rebanding Implementation

20. We establish an 18-month transition period to complete rebanding in Puerto Rico. The transition period will start 60 days after the effective date of this *Third Report and Order and Third Further Notice of Proposed Rulemaking*. As the TA has noted, incumbent non-Sprint licensees must be cleared from Channels 1-120 before public safety licensees may be moved from the former NPSPAC band and ESMR licensees relocated there.⁶⁷ Some licensees will have to be retuned to interim frequencies before being retuned to their final replacement frequencies.⁶⁸

21. Under the 18-month Puerto Rico reconfiguration schedule, planning and negotiation must be completed within 90 days, leaving 15 months for the implementation phase of reconfiguration.⁶⁹ Although implementation may be somewhat complex for some licensees, there are few large systems that must be reconfigured. Consequently, a 15-month implementation period reasonably balances the time needed for licensees and Sprint to negotiate FRAs and the Commission's goal of completing rebanding in a timely manner.

⁶⁵ Applicants may request an exception to the freeze pursuant to the waiver provisions in Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925. Parties filing such a request should carefully review the rule's criteria for a waiver and must provide complete support, including but not limited to documentation demonstrating that they meet each prong of the waiver standard. *See Report and Order*, 19 FCC Rcd 15078 ¶ 204.

⁶⁶ *See* Public Safety and Homeland Security Bureau Provides Guidance for Public Safety Licensees With Regard to License Application and Special Temporary Authorization Procedures and Payment of Frequency Relocation Costs for Public Safety Facilities Added During 800 MHz Band Reconfiguration, *Public Notice*, 21 FCC Rcd 14658 (PSSSB 2006).

⁶⁷ *Id.* at 12 n.25.

⁶⁸ *Id.*

⁶⁹ The *FNPRM* stated that six NPSPAC licensees in Puerto Rico (Bayamon Municipal Government, Municipality of Guaynabo, Puerto Rico Police Communication Division, Puerto Rico Highway and Transportation Authority, Puerto Rico Administration of Courts, and Toa Baja Municipal Government) filed requests for waiver of the June 26, 2008 deadline. *See FNPRM*, 23 FCC Rcd at 10182 n.24. Because the Commission previously suspended the rebanding timetable for Puerto Rico, *800 MHz Second MO&O*, 22 FCC Rcd at 10479-80 ¶ 33, we dismissed those requests as moot. *FNPRM*, 23 FCC Rcd at 10182 n.24. We also note that on July 15, 2008, Commonwealth of Puerto Rico, Tren Urbano (Tren Urbano) in Puerto Rico filed a waiver request of the June 26, 2008 rebanding deadline. *See* Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Public Notice*, 24 FCC Rcd. 7831 (PSSSB 2009). On January 9, 2009, Tren Urbano amended its waiver request to seek an extension until June 1, 2009. *Id.* We deferred action on Tren Urbano's waiver request until the instant *Order*. *Id.* Accordingly, these licensees, and licensee Tren Urbano, are subject to the rebanding timetable we establish with the adoption of the revised Puerto Rico Band plan.

22. We direct the TA to develop, within 30 days of the effective date of this *Third Report and Order and Third Further Notice of Proposed Rulemaking*, a detailed Puerto Rico band reconfiguration timetable with milestones for completion of each stage of the process. The timetable shall take into account variations in licensee characteristics and shall enumerate the specific steps required to implement both Stage 1 relocation of non-public safety licensees and Stage 2 relocation of NPSPAC licensees, EA/ESMR licensees and high-site incumbents. The timetable should also take into account Stage 3 relocation of PCSI's and PAI's EA licenses and, if necessary, *pro rata* apportionment of ESMR spectrum as described in paragraph 13 *supra*.

23. We envision that the sequence of band reconfiguration in Puerto Rico will occur in the following stages:

Stage 1

- Clear non-Sprint incumbent licensees from Channels 1-120.
- Defer assigning replacement spectrum for PCSI's and PAI's EA licenses.

Stage 2

- Relocate NPSPAC licensees 15 MHz lower in frequency to the new NPSPAC band.
- Relocate EA and site-based ESMR licensees (except PCSI and PAI) from the Interleaved channels to the ESMR band.
- Relocate high-site incumbents from the ESMR band to the cleared Interleaved channels.
- Relocate EA/ESMR licensees from the Guard Band to the cleared ESMR channels.

Stage 3 (if necessary)

- Relocate PCSI's and PAI's EA and site based channels to the ESMR band.
- If the ESMR band cannot accommodate all the ESMR band licensees, then:
 - Relieve the shortfall by redesignating Sprint channels for use by other licensees, and, if necessary,
 - Reduce all licensees' channels *pro rata* in order to accommodate all licensees within the ESMR band.

IV. THIRD NOTICE OF PROPOSED RULEMAKING

24. The TA has recommended that we apply the Puerto Rico band plan to the USVI because of the similar incumbencies in the two areas. For example, the TA noted that the USVI is in the same Economic Area (EA) as Puerto Rico, the same EA licensees must relocate to the ESMR Band, and there is a similar shortage of ESMR spectrum to accommodate ESMR-eligible licensees that wish to relocate.⁷⁰ The TA also noted that the USVI, like Puerto Rico, has site-based licensees that must be relocated from the ESMR Band.⁷¹

25. In the *800 MHz Second MO&O*, the Commission delegated authority to PSHSB to establish a band plan for Puerto Rico, but did not delegate similar authority with respect to the USVI.⁷² Subsequently, in light of the TA's recommendation to adopt the same band plan for the USVI as for Puerto Rico, the Commission delegated authority to PSHSB to seek comment on the USVI portion of the TA Proposal and to adopt a rebanding plan for the USVI.⁷³ Based on the record before us, we tentatively

⁷⁰ TA Proposal at 11.

⁷¹ *Id.*

⁷² See *800 MHz Second MO&O*, 22 FCC Rcd at 10479 n.72.

⁷³ See *Improving Public Safety Communications in the 800 MHz Band*, *Fourth Memorandum Opinion and Order*, WT Docket 02-55, 23 FCC Rcd 18512, 18521-22 ¶ 34 (2008).

conclude to adopt for USVI the same band plan we propose to adopt for Puerto Rico. We seek comment on our tentative conclusion.⁷⁴ We also seek comment on the appropriate rebanding timetable for the USVI. Should we implement an 18-month timetable similar to the Puerto Rico timetable (dated from the effective date of the rules that we adopt for rebanding in the USVI), or would a different, possibly shorter, timetable be appropriate?

V. PROCEDURAL MATTERS

A. Third Report and Order

26. *Paperwork Reduction Act Analysis.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Therefore it does not contain any new or modified “information burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.

B. Third Further Notice of Proposed Rulemaking

1. Comment Filing Procedures

27. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings related to this *Third Further Notice of Proposed Rulemaking (Third FNPRM)* should refer to WT Docket No. 02-55. Comments may be filed using: (1) the Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

⁷⁴ We note that, in the *FNPRM*, we waived the June 26, 2008, deadline for completion of band reconfiguration as it applies to 800 MHz licensees in the USVI pending Commission action on the TA’s proposed USVI band plan. See *FNPRM*, 23 FCC Rcd at 10180 n.7.

U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, S.W., Washington DC 20554.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).
- Parties should send a copy of their filings to John Evanoff, Policy Division, Public Safety and Homeland Security Bureau, Federal Communications Commission, Room 7-B550, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to john.evanoff@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.
- Documents in WT Docket No. 02-55 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street S.W., Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

2. Initial Regulatory Flexibility Analysis

28. Pursuant to the Regulatory Flexibility Act (RFA),⁷⁵ PSHSB has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the proposals considered in this *Third FNPRM*. The text of the IRFA is set forth in Appendix A. Written public comments are requested on this IRFA. Comments must be filed in accordance with the same filing deadlines for comments on the *Third FNPRM*, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center will send a copy of the *Third FNPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.⁷⁶

3. Initial Paperwork Reduction Act of 1995 Analysis

29. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

⁷⁵ See 5 U.S.C. § 603. The RFA has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996)(CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

⁷⁶ 5 U.S.C. § 603(a).

V. ORDERING CLAUSES

30. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 332, and Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392, that this *Third Report and Order and Third Further Notice of Proposed Rule Making* IS ADOPTED.

31. IT IS FURTHER ORDERED that the amendments of the Commission's Rules set forth in Appendix D ARE ADOPTED, effective thirty days from the date of publication in the Federal Register.

32. IT IS FURTHER ORDERED that the Final Regulatory Flexibility Certification required by Section 604 of the Regulatory Flexibility Act, 5 U.S.C. § 604, and as set forth in Appendix A hereto IS ADOPTED.

33. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Third Report and Order and Third Further Notice of Proposed Rule Making*, including the Final Regulatory Flexibility Certification and Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

34. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. 1.415, 1.419, interested parties may file comments on this *Third Further Notice of Proposed Rulemaking* within 30 days of the date of publication of this *Third Report and Order and Third Further Notice of Proposed Rulemaking* in the Federal Register and reply comments within 45 days of that date.

FEDERAL COMMUNICATIONS COMMISSION

James Arden Barnett, Jr., Rear Admiral (Ret.)
Chief, Public Safety and Homeland Security Bureau

APPENDIX A

FINAL REGULATORY FLEXIBILITY CERTIFICATION

35. The Regulatory Flexibility Act of 1980 (RFA),⁷⁷ requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities.”⁷⁸ The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁷⁹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁸⁰ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁸¹ In sum, we certify that the rule changes and actions in this *Third Report and Order (Third R&O)* will have no significant economic impact on a substantial number of small entities.

36. In this *Third Report and Order*, the Public Safety and Homeland Security Bureau, on delegated authority, establishes a revised 800 MHz band plan for Puerto Rico in order to accomplish the Commission’s goals for band reconfiguration. The band plan is identical to the band plan that the Commission previously adopted in this proceeding with one exception—the Puerto Rico band plan includes a slightly larger Expansion Band and a slightly smaller Guard Band. Thus, the Expansion and Guard Bands we establish do not impact a significant number of small businesses, and our aim is to provide interference protection to eligible non-ESMR licensees. Furthermore, although ESMR licensees and ESMR-eligible licensees may be subject to a *pro rata* apportionment of spectrum, their operating capacity will not be significantly reduced, and hence the economic effect on their operations will not be significant.⁸² Therefore, we certify that the requirements of this *Third Report and Order* will not have a significant economic impact on a substantial number of small entities.

37. The Commission will send a copy of the *Third Report and Order* including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. § 801(a)(1)(A). In addition, the *Third Report and Order* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register. See 5 U.S.C. § 605(b).

⁷⁷ The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

⁷⁸ 5 U.S.C. § 605(b).

⁷⁹ 5 U.S.C. § 601(6).

⁸⁰ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁸¹ Small Business Act, § 15 U.S.C. 632.

⁸² Sprint may lose significant amounts, or all, of its Puerto Rico spectrum if it becomes necessary to apportion ESMR spectrum to accommodate other licensees. See *800 MHz Second MO&O*, 22 FCC Rcd at 10479-80 ¶ 33. Sprint, however, which bears financial responsibility for 800 MHz band reconfiguration, received 10 MHz of spectrum at 1.9 GHz pursuant to the Commission’s 800 MHz orders. See generally *800 MHz Report and Order*.

APPENDIX B

INITIAL REGULATORY FLEXIBILITY ANALYSIS

38. As required by the Regulatory Flexibility Act of 1980 (RFA),⁸³ as amended, the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Third Further Notice of Proposed Rulemaking (Third FNPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the first page of the *Third FNPRM*. The Commission will send a copy of the *Third FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).⁸⁴ In addition, the *Third FNPRM* and IRFA (or summaries thereof) will be published in the Federal Register.⁸⁵

A. Need for, and Objectives of, the Proposed Rules

39. In this *Third FNPRM*, we consider the 800 MHz Transition Administrator's (TA) proposal to reconfigure the band plan for the U.S. Virgin Islands (USVI). In the *Second Memorandum Opinion and Order*, the Commission stated that the alternative band plan would be confined to Puerto Rico since no party had identified any comparable channel shortage outside of Puerto Rico. However, because Puerto Rico and USVI are in the same EA, EA 174, and have the same EA licensees, the USVI faces the same shortage of ESMR spectrum as Puerto Rico. Similarly, there are also high-site incumbents in the USVI to be relocated from the ESMR band. Given these circumstances, the TA determined that the USVI is served best by the same alternative band plan as Puerto Rico. Using the same alternative band plan for the entire EA will also permit frequency planning and future spectrum coordination to be performed more efficiently. Therefore, the TA proposed that the Puerto Rico band plan be applied to the USVI. In light of the TA's recommendation to adopt the same band plan for the USVI as for Puerto Rico, the Commission has delegated authority to the PSHSB to seek comment on the USVI portion of the TA Proposal and to adopt a rebanding plan for the USVI.

B. Legal Basis

40. The legal basis for any action that may be taken pursuant to this *Third FNPRM* is contained in Sections 4(i), 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(f) and (r), and 332.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

41. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules.⁸⁶ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and

⁸³ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁸⁴ See 5 U.S.C. § 603(a).

⁸⁵ See *id.*

⁸⁶ 5 U.S.C. §§ 603(b)(3), 604(a)(3).

“small governmental jurisdiction.”⁸⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁸⁸ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁸⁹

42. A small organization is generally any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.⁹⁰ Nationwide, as of 1992, there were approximately 275,801 small organizations.⁹¹ A “small governmental jurisdiction” generally means “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.”⁹² As of 1992, there were approximately 85,006 such jurisdictions in the United States.⁹³ This number included 38,978 counties, cities and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000.⁹⁴ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities. Below, we further describe and estimate the number of small entities—applicants and licensees—that may be affected by the proposals, if adopted, in this *Third FNPRM*.

43. *Public Safety Radio Licensees.* Public safety licensees that operate 800 MHz systems in the USVI region would be required to relocate their station facilities according to the band plan proposed in this *Third FNPRM*. As indicated above, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.⁹⁵

44. *Business, I/LT, and SMR Licensees.* Business and Industrial Land Transportation (B/ILT) and Specialized Mobile Radio (SMR) licensees which operate 800 MHz systems in the USVI region would be required to relocate their station facilities according to the band plan proposed in this *Third FNPRM*. Neither the Commission nor the SBA has developed a definition of small businesses directed specifically toward these licensees.

45. *ESMR Licensees.* Enhanced Specialized Mobile Radio (ESMR) licensees and ESMR-eligible licensees which operate 800 MHz systems in the USVI would be required to relocate their station facilities according to the band plan proposed in this *Third FNPRM*. Neither the Commission nor the SBA has developed a definition of small businesses directed specifically toward these licensees.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

⁸⁷ 5 U.S.C. § 601(6).

⁸⁸ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register.”

⁸⁹ 15 U.S.C. § 632.

⁹⁰ *Id.* at § 601(4).

⁹¹ U.S. Department of Commerce, Bureau of the Census, *1992 Economic Census*, Table 6 (special tabulation of data under contract to the Office of Advocacy of the U.S. Small Business Administration).

⁹² 5 U.S.C. § 601(5).

⁹³ U.S. Department of Commerce, Bureau of the Census, *1992 Census of Governments*.

⁹⁴ *Id.*

⁹⁵ 5 U.S.C. § 601(5).

46. The *Third FNPRM* does not propose a rule that will entail additional reporting, recordkeeping, and/or third-party consultation or other compliance efforts.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

47. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) exemption from coverage of the rule, or any part thereof, for small entities.”⁹⁶

48. The TA has recommended that we apply the Puerto Rico band plan to the USVI because of the similar incumbencies in the two areas. For example, the TA noted that the USVI is in the same Economic Area (EA) as Puerto Rico, the same EA licensees must relocate to the ESMR Band, and there is a similar shortage of ESMR spectrum to accommodate ESMR-eligible licensees that wish to relocate. The TA also noted that the USVI, like Puerto Rico, has site-based licensees that must be relocated from the ESMR Band.

49. To the extent that adoption of the TA’s proposal may impose an economic impact in the USVI on relocating non-ESMR and site-based incumbents, including public safety, to the non-ESMR band, that impact will be borne by Sprint because Sprint must pay the costs of 800 MHz band reconfiguration. Under Small Business Administration criteria, Sprint is a large entity. Furthermore, there is no evidence in the record that non-Sprint licensees in the USVI market, including small wireless cellular, public safety, governmental entities or other wireless entities, would suffer adverse economic consequences. Indeed, these licensees are likely to enjoy several benefits, including improved interference protection, as a result of band reconfiguration.

50. Additionally, while apportioning spectrum in the ESMR band may result in a reduction in ESMR spectrum availability, licensees can accommodate these reductions by employing more spectrum-efficient technologies and higher-quality digital technologies. ESMR and ESMR-eligible licensees are also likely to receive a number of benefits as a result of modifying the USVI Band Plan. For example, as a consequence of 800 MHz band reconfiguration, ESMR-eligible licensees will be able to relocate EA and site-based facilities to the ESMR band that are currently located below the ESMR band. If these facilities are relocated and integrated into an ESMR band system, these licensees (1) will be relieved of the cost and limitations associated with abating interference created by the interleaving of ESMR stations with high-site systems used by public safety and others in the non-ESMR portion of the band and (2) will be able to take advantage of spectrally efficient technologies.

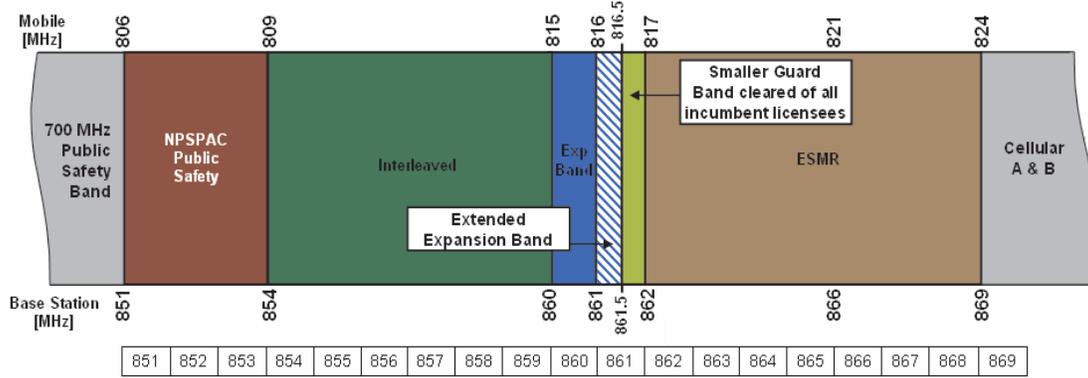
F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

51. None.

⁹⁶ 5 U.S.C. §§ 603(c)(1)-(c)(4).

APPENDIX C

PUERTO RICO AND PROPOSED U.S. VIRGIN ISLANDS BAND PLAN



APPENDIX D

FINAL RULES

PART 90 – PRIVATE LAND MOBILE RADIO SERVICES

48. The authority citation for Part 90 continues to read as follows:

AUTHORITY: 4(i), 11, 303(g), 303(r), and 302(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

49. Paragraphs (1) and (2) of Section 90.617(k) are modified and new paragraphs (3) and (4) are added to Section 90.617(k). The introductory text in Section 90.617(k) is left unchanged.

§ 90.617 Frequencies in the 809.750-824/824.750-869 MHz, and 896-901/935-940 MHz bands available for trunked, conventional or cellular system use in non-border areas.

* * * * *

(k) ***

(1) Mobile units (except in Puerto Rico):

(i) For channels 511 to 524—the minimum median desired signal levels specified in §22.970(a)(1)(i) of this chapter and §90.672(a)(1)(i) shall apply;

(ii) For channels 524 to 534—the minimum median desired signal level shall increase linearly from the values specified in §22.970(a)(1)(i) of this chapter and §90.672(a)(1)(i) to -70 dBm;

(iii) For channels 534 to 550—the minimum median desired signal level shall increase linearly from -70 dBm to -65 dBm.

(2) Portable units (except in Puerto Rico):

(i) For channels 511 to 524—the minimum median desired signal levels specified in §22.970(a)(1)(i) of this chapter and §90.672(a)(1)(i) shall apply;

(ii) For channels 524 to 530—the minimum median desired signal level shall increase linearly from the values specified in §22.970(a)(1)(i) of this chapter and §90.672(a)(1)(i) to -80 dBm;

(iii) For channels 530 to 534—the minimum median desired signal level shall increase linearly from -80 dBm to -70 dBm;

(iv) For channels 534 to 550—the minimum median desired signal level shall increase linearly from -70 dBm to -65 dBm.

(3) Mobile units operating in Puerto Rico:

(i) For channels 511 to 530—the minimum median desired signal levels specified in §22.970(a)(1)(i) of this chapter and §90.672(a)(1)(i) shall apply;

(ii) For channels 531 to 534—the minimum median desired signal level shall increase linearly from -80.2 dBm to -70 dBm;

(iii) For channels 534 to 550—the minimum median desired signal level shall increase linearly from –70 dBm to –65 dBm.

(2) Portable units operating in Puerto Rico:

(i) For channels 511 to 530—the minimum median desired signal levels specified in §22.970(a)(1)(i) of this chapter and §90.672(a)(1)(i) shall apply;

(ii) For channels 531 to 534—the minimum median desired signal level shall increase linearly from –80 dBm to –70 dBm;

(iv) For channels 534 to 550—the minimum median desired signal level shall increase linearly from –70 dBm to –65 dBm.

50. Sections 90.677(b) and (c) are amended.

§ 90.677 Reconfiguration of the 806-824/851-869 band in order to separate cellular systems from non-cellular systems

* * * * *

(b) *Voluntary negotiations.* Thirty days before the start date for each NPSPAC region other than Region 47, the Chief, Public Safety and Homeland Security Bureau will issue a public notice initiating a three-month voluntary negotiation period. During this voluntary negotiation period, Nextel and all incumbents may negotiate any mutually agreeable relocation agreement. Sprint Nextel and relocating incumbents may agree to conduct face-to-face negotiations or either party may elect to communicate with the other party through the Transition Administrator.

(c) *Mandatory negotiations.* If no agreement is reached by the end of the voluntary period, a three-month mandatory negotiation period will begin during which both Sprint Nextel and the incumbents must negotiate in “good faith.” In Region 47, a 90-day mandatory negotiation period will begin 60 days after the effective date of the *Third Report and Order and Third Further Notice of Proposed Rulemaking* in WT Docket 02-55. Sprint Nextel and relocating incumbents may agree to conduct face-to-face negotiations or either party may elect to communicate with the other party through the Transition Administrator. All parties are charged with the obligation of utmost “good faith” in the negotiation process. Among the factors relevant to a “good-faith” determination are:

(1) Whether the party responsible for paying the cost of band reconfiguration has made a *bona fide* offer to relocate the incumbent to comparable facilities;

(2) The steps the parties have taken to determine the actual cost of relocation to comparable facilities; and

(3) Whether either party has unreasonably withheld information, essential to the accurate estimation of relocation costs and procedures, requested by the other party. The Transition Administrator may schedule mandatory settlement negotiations and mediation sessions and the parties must conform to such schedules.

APPENDIX E

LIST OF COMMENTING PARTIES

COMMENTS

North Sight Communications, Inc.
Preferred Communications System, Inc.
Sprint Nextel Corporation

REPLY COMMENTS

Charles D. Guskey
Preferred Communications Systems, Inc.
Sprint Nextel Corporation